



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov>



IN REPLY REFER TO:
3100 / (UT-922)

JUL 20 2007

CERTIFIED MAIL – Return Receipt Requested

DECISION

Corey Fisher	:	Protest to the Inclusion of Eight
Energy Field Coordinator	:	Parcels in the May 16, 2006
Trout Unlimited	:	Competitive Oil and Gas Lease Sale
401 B East Spruce Street	:	
Missoula Montana 59802	:	

Protest Partially Granted and Partially Denied

On March 31, 2006, the Bureau of Land Management (BLM) provided notice that 295 parcels of land would be offered in a competitive oil and gas lease sale on May 16, 2006. The notice also indicated that the protest period for the lease sale would end May 1, 2006. In a letter received by BLM on May 1, 2006, Trout Unlimited (TU) protested the inclusion of the following eight parcels of land, all of which are located on public lands administered by BLM's Salt Lake Field Office (SLFO).

UT0506-002	UT0506-007
UT0506-004	UT0506-008
UT0506-005	UT0506-009
UT0506-006	UT0506-010

The stated basis for the TU protest is its concern that the above-referenced potential leases along or around the Saleratus Creek, Otter Creek, and Laketown Creek watersheds would damage habitat and impair water quality necessary for the survival of coldwater fisheries. Specifically, TU contends that further analysis of the impacts of energy development on fish, wildlife, and water resources, including aquifers, is necessary prior to granting the leases; and that certain baseline water quality and fisheries population data, as well as monitoring plans, need to be in place before the BLM issues leases that grant exploration and development rights. TU states that since the watersheds involved with the subject parcels contain habitat or potential habitat for the Bonneville Cutthroat Trout, the BLM should be taking actions that are conducive to good water quality and healthy stream conditions, and that if leases are issued they should include a stipulation that no surface occupancy or disturbance would occur within 500 feet of perennial or intermittent streams. Further, TU contends that in addition to site-specific impacts to the fisheries, the BLM should analyze the cumulative down-stream impacts to the Bear River, which is listed on Utah's 2004 303(d) List of Impaired Waters, prior to leasing the subject parcels.

BLM has Considered Impacts on Water Quality and Fisheries

In Item D.3 (page 6) of the SLFO Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (DNA), the parcels are identified as being within areas that meet the State-identified beneficial uses [Utah's 303(d) List of Waters (2004)]. Items D.5 and D.6 (pages 5 and 6) of the SLFO DNA indicate that the existing NEPA documents analyzed reasonably foreseeable impacts based on a reasonably foreseeable level of exploration and development. To date, no oil and gas wells have been drilled in the Bear River East area.

The Bear River East Management Framework Plan (MFP) Amendment, referenced in the SLFO DNA, revised the oil and gas leasing categories in the Randolph MFP, and incorporated a stipulation (UT-S-04) that states that "NSO (no surface occupancy) allowed within 600 ft. of live water." The locations to which this stipulation applies are indicated on maps maintained at the SLFO. This controlled surface use (CSU) stipulation was correctly applied to a portion of parcel UT0506-004. This same stipulation also applies, and should have been attached, to portions of parcels UT0506-005 and UT0506-009, but was inadvertently omitted. An addendum to the SLFO DNA has corrected this oversight (enclosed), and the record is hereby modified to reflect this change to the leasing decision signed on March 31, 2006.

The TU protest claims that parcel UT0506-002 includes a portion of Laketown Creek and should have no surface occupancy or disturbance stipulations applied within 500 feet of perennial or intermittent streams on the lease parcel. However, Laketown Creek is not within any portion of this parcel. Hence, the NSO stipulation applied to other parcels does not apply to this parcel, nor does the Bear River East MFP Amendment prescribe this stipulation.

The TU protest claims that parcels UT0506-004 and UT0506-005 are in the Otter Creek watershed and should have no surface occupancy or disturbance stipulations applied within 500 feet of perennial and intermittent streams. Parcel UT0506-004 contains a stipulation that precludes surface occupancy within 600 feet of live water on a portion of the parcel and, with the modification to the record referenced above and enclosed herewith (Addendum of SLFO DNA), the same stipulation has now been applied to the relevant portion of parcel UT0506-005.

The TU protest claims that parcels UT0506-006 through UT0506-010 are in the Saleratus Creek watershed and should include a no surface occupancy or disturbance stipulation within 500 feet of perennial and intermittent streams. However, Saleratus Creek has been artificially rerouted into ditches and canals on private land, thus the Bear River East MFP Amendment does not provide for such a stipulation, nor is it applicable to these parcels. However, parcel UT0506-009 contains a portion of Neponset Reservoir, and with the modification to the record referenced above and enclosed herewith (Addendum of SLFO DNA), the same stipulation has now been applied to the relevant portion of parcel UT0506-009.

The Mineral Leasing Act of 1920, as amended (and the corresponding federal regulations at 43 C.F.R. Parts 3100-3500), provide the legal and regulatory framework for issuing mineral leases and prospecting permits. If necessary, under these regulations (43 C.F.R. 3101.1-2), BLM may require relocation of drilling or other proposed lease operations by up to 200 meters, which would provide for additional protection for perennial and intermittent streams, as well as springs, on all of the protested leases.

Except for the inadvertent omission of the no surface occupancy stipulation for portions of parcels UT0506-005 and UT0506-009, the TU protest fails to identify any procedural or legal error in BLM's decision to offer parcels UT0506-002, and UT0506-004 through UT0506-010 in the May 2006 oil and gas lease sale. The record shows that the BLM considered the issues raised by TU in its protest, modified the record appropriately, and offered the subject parcels in accordance with applicable law and policy. For the reasons discussed above, BLM partially grants and partially denies TU's protest.

BLM has received offers on all parcels that are the subject of this decision and will issue leases for these parcels subsequent to issuing this decision.

This decision may be appealed to the Interior Board of Land Appeals (Board), in accordance with the regulations contained in 43 CFR Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR § 4.21; 58 FR 4939, January 19, 1993) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay also must be submitted to each party named in this decision and to the Interior Board of Land Appeals Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 at the same time they are submitted to this office. Copies of the notice of appeal, petition for stay and any supporting documentation also must be filed with the Office of the Regional Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, Utah 84138-1180, not later than 15 days after filing the documents with the authorized officer and/or IBLA (see 43 CFR § 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success of the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.



State Director
Selma Sierra

Enclosures

1. Form 1842-1 (2pp)
2. List of purchasers (1pp)
3. Addendum to SLFO DNA (2pp)

cc: Office of the Regional Solicitor, 125 So. State St., Ste 6201, SLC, UT 84138

Alker Exploration LLC, 5360 Vine Hill Rd, Sebastopol, CA 95472

Energy Investments, 168 Parkview, Golden, CO 80401

Nerd Gas Company LLC, 1701 East E Street, Casper, WY 82609

Utah Northern Wasatch LP, 111 Soledad, Suite 250, San Antonio, TX 78205

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- | | |
|---|---|
| 1. NOTICE OF APPEAL..... | A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413). |
| 2. WHERE TO FILE NOTICE OF APPEAL.....

WITH COPY TO SOLICITOR... | Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145-0151 or
Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101
and
Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111 |
| 3. STATEMENT OF REASONS

WITH COPY TO SOLICITOR..... | Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).

and
Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111 |
| 4. ADVERSE PARTIES..... | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. |
| 5. PROOF OF SERVICE..... | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)). |
| 6. REQUEST FOR STAY..... | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as other provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ----- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2005)

List of Purchasers for May 2006
TU Protested Parcels

Alker Exploration LLC
5360 Vine Hill Road
Sebastopol, CA 95472

Energy Investments
168 Parkveiw
Golden, CO 80401

Nerd Gas Company LLC
1701 East E Street
Casper, WY 82609

Utah Northern Wasatch, LP
111 Soledad, Suite 250
San Antonio, TX 78205

United States Department of the Interior
Bureau of Land Management

June 20, 2007



Addendum
Documentation of LUP Conformance and
Determination of NEPA Adequacy (DNA)
UT-020-2006-020

May, 2006 Oil and Gas Lease Sale

Location: Summit, Rich, Tooele, Utah and Wasatch Counties, Utah

Applicant/Address: Utah State Office - BLM

U.S. Department of the Interior
Bureau of Land Management
Salt Lake Field Office
2370 South 2300 West
Salt Lake City, 84119
Phone: (801) 977-4300
FAX: (801) 977-4397

Addendum to Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (DNA), UT-020-2006-020, May, 2006 Oil and Gas Lease Sale, Summit, Rich, Tooele, Utah and Wasatch Counties, Utah, March 13, 2006

In a review of this DNA as a result of a protest filed by Trout Unlimited on May 1, 2006, several corrections are necessary. For oil and gas lease parcels located in Rich County, Utah which were recommended for leasing, the DNA inadvertently failed to address a land use planning decision as it relates to parcels UT0506-005 and UT0506-009. The Bear River East Management Framework Plan (MFP) Amendment, referenced in the DNA, revised the oil and gas leasing categories in the Randolph MFP, and incorporated a stipulation (UT-S-04) that states that "NSO (no surface occupancy) allowed within 600 ft. of live water." The locations to which this stipulation applies are indicated on maps maintained at the Salt Lake Field Office. This controlled surface use (CSU) stipulation was correctly applied to a portion of parcel UT0506-004 (T. 12 N., R. 6 E., SLM, Section 27, SW, NWSE). This same stipulation applies to portions of two other parcels (UT0506-005 and UT0506-009) and is indicated on the above-referenced maps, but the application of this stipulation was omitted as it applies to portions of these parcels. The stipulation should be applied as follows:

Parcel UT0506-005: T. 12 N., R. 6 E., SLM, Section 34, S2SW

Parcel UT0506-009: T. 8 N., R. 7 E., SLM, Section 34, All

The following changes are hereby incorporated into the DNA:

(1) On page two, last paragraph, the first sentence is amended to read: "A portion of the lands within the 12 parcels would be offered as category 2 leases, open for leasing with special stipulations, **and portions of 3 parcels** would be offered as category 3 leases, open for leasing with no surface occupancy..."

(2) On page 12 (Attachment 1) under the heading **UT0506-005**, the following stipulation is added:

UT-S-04: CSU – NSO allowed within 600 ft. of live water located in S2SW Sec. 34

(3) On page 14 (Attachment 1) under the heading **UT0506-009**, the following stipulation is added:

UT-S-04: CSU – NSO allowed within 600 ft. of live water located in Section 34 (all)

With these corrections the DNA and leasing recommendations accurately reflect the relevant land use planning decisions.

Michael D. Lehn
Assistant Field Manager
Renewable Resources

20 June 2007
Date